

## BILL ANALYSIS

S.B. 489  
By: Santiesteban

Senate Natural Resources Committee  
8/21/89  
Enrolled

### BACKGROUND:

The Texas Department of Agriculture (department) was created in 1907 and is guided by the commissioner of agriculture who is elected every four years. The department is involved in every aspect of agriculture in the state and is responsible for implementing or enforcing 50 separate state laws. The department's programs break into two main areas: regulatory efforts and market development. Major regulatory programs include enforcing weights and measures and food quality laws, controlling the distribution, use, and disposal of pesticides and administering seed labeling laws. Market development activities include promotion of Texas agricultural products nationwide and internationally, assisting producers in establishing new agriculture industries and alternative crops and assisting in the establishment of farmers markets and marketing cooperatives for the direct sale of products. To carry out its programs, the department has a budget of \$21.3 million and 600 employees for fiscal year 1989. The department has in addition to its headquarters in Austin, a statewide network of sixteen field offices, nine laboratories and six export facilities.

The department is subject to the sunset act and will be abolished September 1, 1989, unless continued by the legislature. As a result of its review of the department the Sunset Advisory Commission recommended continuation and several statutory modifications which are contained in this legislation.

### PURPOSE:

S.B. 489 creates new law and amends existing law to make statutory modifications recommended by the Sunset Advisory Commission, and to provide for the continuation, powers, and duties of the Department of Agriculture. The bill includes changes in sections of the Agriculture Code which pertain to regulation of: weights and measures, grain warehouses, seeds, tomatoes, eggs, citrus fruits, nurseries and florists, quarantines, herbicides, and pesticides. Some of the changes include the authority to impose stiff civil penalties for violation of rules and regulations.

S.B. 489 provides for a change in the penalties for violation of various department rules, regulations, and statutes to make them consistent with the Penal Code. The bill also provides the department with new authority to assess an administrative penalty for violations in several of its regulatory programs.

S.B. 489 provides the department with general authority to accept gifts, grants, and donations for use in its programs.

The bill states that the department is the lead agency for pesticide regulation in Texas, requires the department to take certain actions in the regulation of pesticides in cooperation with the U.S. Environmental Protection Agency or other pertinent federal agencies, limits the department in placing a pesticide on the state-limited-use list by requiring the department to obtain the approval of the Texas Water Commission (TWC) concerning the impact of the pesticide's use on water quality, and requires the department to add any pesticide to the state-limited-use list and issue regulations regarding use of the pesticide at the direction of the TWC.

S.B. 489 also creates the Agriculture Resources Protection Authority (authority), with the commissioner of agriculture as the pre-

siding officer. The bill provides that the authority is the coordinating body for the policies and programs of management, regulation, and control of pesticides conducted by the department, the State Soil and Water Conservation Board, the Texas Agricultural Extension Service, TDH, TWC, and the Texas Structural Pest Control Board, and specifies the duties of the commissioner concerning the authority.

#### RULEMAKING AUTHORITY:

It is the committee's opinion that rulemaking authority is granted under the following sections of this bill:

SECTION 9. Section 12.018. Requires the Texas Department of Agriculture (department), if it charges fees for laboratory analysis, to establish the fees by rule.

SECTION 12. Section 12.023. Provides the department with the authority, by rule, to stagger renewal of licenses in its grain warehouse, seed, nursery/floral, pesticide and egg programs.

SECTION 15. Section 12.026. Requires the department to establish, by rule, methods by which consumers and service recipients are notified of how to direct complaints to the department.

SECTION 18. Section 12.029. Requires the department to establish, by rule, policies to encourage and help minority owned businesses to bid for contract and open market purchases of the department.

SECTION 40. Section 62.005. Provides for a non-refundable application fee, as established by department rule, for producers of Foundation, Registered or Certified seed or plants.

SECTION 47. Section 71.042. Provides that the department's rulemaking authority related to nursery/floral regulation applies to leasing as well as to selling.

SECTION 48. Section 71.043. Requires the nursery/floral registration fees authorized by the section to be defined by department rule.

SECTION 52. Section 71.052(c). Allows the department to adopt rules governing the lease of products for the control of camellia flower blight.

SECTION 55. Section 71.057. Requires the registration fees for nursery dealers and agents authorized by this section to be defined by department rule.

SECTION 79. Section 76.007. Requires the department to take certain actions in the regulation of pesticides in cooperation with the U.S. Environmental Protection Agency or other pertinent federal agencies, including the adoption of rules to carry out the provisions of this chapter.

SECTION 81. Section 76.004. Requires the department to conduct at least five regional hearings statewide before adoption of any rule for carrying out the provisions of this chapter. Allows the department to adopt rules providing for compliance with federal pesticide rules and regulations. Requires any department rules concerning water quality to be consistent with those of TWC pursuant to the recommendations of the Groundwater Protection Committee.

SECTION 82. Section 76.009. Creates the Agriculture Resources Protection Authority (authority), with the commissioner of agriculture as the presiding officer. Provides that

the authority is the coordinating body for the policies and programs of management, regulation, and control of pesticides conducted by the department, the State Soil and Water Conservation Board, the Texas Agricultural Extension Service, TDH, TWC, and the Texas Structural Pest Control Board. Allows the authority to adopt rules relating to pesticides, with exceptions. Limits the actions of agencies and the commissioner concerning rules adopted by the authority. Specifies duties of the commissioner concerning the authority.

SECTION 89. Section 76.105. Allows the department to adopt rules commensurate with federal rules concerning the licensing of commercial and private applicators. Allows the department to adopt by rule federal standards for each applicator classification for which federal standards are imposed.

#### SECTION BY SECTION ANALYSIS:

NOTE: ALL SECTIONS OF THIS BILL, EXCEPT SECTION 130,  
REFER TO THE AGRICULTURE CODE.

SECTION 1. Amends Section 11.003, to update the Texas Department of Agriculture's (department's) sunset review date to 2001, to provide for the usual twelve year review.

SECTION 2. Lists eligibility requirements for election or appointment as a commissioner.

SECTION 3. Amends Section 12.013, to add standard language developed by the Sunset Commission, as follows:

(a) Requires the commissioner to inform department employees of the qualifications of employment and standards of conduct contained in state law.

(b) Requires the commissioner or designee to develop a job performance system upon which merit salary increases will be based.

(c) Requires the commissioner or designee to develop an intra-agency career ladder program.

(d)-(f) Requires the commissioner or designee to prepare and maintain an equal employment policy.

SECTION 4. Adds Section 12.0135, to include standard language developed by the Sunset Commission. Prohibits a registered lobbyist from acting as general counsel to the department. Also defines conflicts of interest situations related to trade associations for employees grade 17 and over.

SECTION 5. Amends Section 12.014(a), to add standard language developed by the Sunset Commission. Requires an annual report detailing the financial transactions of the department.

SECTION 6. Adds Section 12.0145, to require the department to submit, as part of its appropriations request, a fee schedule that would cover the direct costs of all its regulatory programs except those exempted by the department because the cost recovery would be contrary to the program's purpose.

SECTION 7. Amends Section 12.017(c), to change the penalty for a violation of a department rule from a specific dollar amount to a Class C misdemeanor to make it consistent with the Penal Code.

SECTION 8. Adds Section 12.0175, to authorize the department to charge a membership fee of up to \$50 for any programs it establishes promoting products grown or made from ingredients grown in the state. Also authorizes the department, if it establishes a na-

tural, lean meat or organic certification program, to charge a fee not to exceed \$150 for each producer certified under the program.

SECTION 9. Amends Section 12.018, to authorize the department to provide laboratory analysis, upon request, and to charge a fee for such testing ranging from \$5 to \$150 for each analysis performed. Requires the department to set the fee by rule. Fees must recover at least half the cost of performing the analysis.

SECTION 10. Amends Section 12.020, to provide the department with new authority to assess an administrative penalty for violations in several of its regulatory programs. These programs include weights and measures, grain warehouse, seed, Agricultural Protective Act, eggs, nursery/floral, and enforcement of quarantines. Penalties authorized range from \$500 to \$5,000. Requires the department to use specific criteria in determining the penalty amounts. Provides required procedures whereby the department must notify the person charged of the penalty. Provides procedures regarding payment of the penalty and the ability to contest the department's findings. Deletes current administrative penalty language.

SECTION 11. Adds Section 12.022, to provide the department with general authority to accept gifts, grants, and donations for use in its programs. Requires the department to file an annual report accounting for all gifts, grants, and donations received and disbursed, used, or maintained by the department during the preceding fiscal year.

SECTION 12. Amends Section 12.023, to include standard language developed by the Sunset Commission. Provides the department with authority by rule to stagger renewal of licenses in its grain warehouse, seed, nursery/floral, pesticide and egg programs.

SECTION 13. Adds Section 12.024, to authorize the department to charge a fee for late renewal of licenses issued in its grain warehouse, nursery/floral, pesticide and egg programs. Provides a schedule on which to base the late fee charges.

SECTION 14. Adds Section 12.025, to include standard language developed by the Sunset Commission. Requires the department to develop a plan which describes how non-English speaking or disabled persons can be provided reasonable access to the department's programs.

SECTION 15. Adds Section 12.026, to include standard language developed by the Sunset Commission. Requires the board to prepare and distribute information of public interest concerning the functions of the department and its complaint procedures. Requires the department by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department. Requires the department to maintain files on complaints that the department has the authority to resolve and requires that all parties to formal complaints be periodically informed in writing as to the status of the complaint.

SECTION 16. Adds Section 12.027, to provide that the department is subject to provisions of the State Purchasing and General Services Act, (Article 601b, V.T.C.S.), which require a review of commercially available activities performed in-house by the department.

SECTION 17. Adds Section 12.028, to include standard language developed by the Sunset Commission. Prohibits the department from adopting rules restricting competitive bidding or advertising except to prohibit false, misleading or deceptive practices.

SECTION 18. Adds Section 12.029, to require the department to establish by rule policies to encourage and help minority small businesses to bid for contract and open market purchases of the department. Requires the department to submit the policies to the State Purchasing and General Services Commission and the Department

of Commerce. The commission is required to study and report on the effectiveness of the policies.

SECTION 19. Adds Section 13.007, to authorize the imposition of new civil penalties of up to \$500 per day per violation for violations of the weights and measures law or related rules. Provides that all civil penalties recovered in suits first instituted by a local government under this section shall be equally divided between the state of Texas and the local government. Provides the department with the ability to seek injunctive relief through the attorney general or the appropriate county or district attorney for violations of the weights and measures law or related rules.

SECTION 20. Amends Section 13.041, to change the misdemeanor penalties in the weights and measures statute to make them consistent with the Penal Code.

SECTION 21. Amends Section 13.101, to require certain weights or measures to be inspected and tested for correctness at least once every three years. Requires the department to require additional inspection and testing of weights and measures to the extent necessary to ensure compliance with the official standards.

SECTION 22. Amends Section 13.102(b), to provide for the name change of the National Bureau of Standards to the National Institute of Standards and Technology.

SECTION 23. Amends Section 13.112, to delete the requirement that the department perform annual inspections of the weights and measures devices of state agencies and allows for inspection on the request of the agencies.

SECTION 24. Amends Section 13.113, to provide for the name change of the National Bureau of Standards to the National Institute of Standards and Technology.

SECTION 25. Amends Section 13.114(a), to provide for the name change of the National Bureau of Standards to the National Institute of Standards and Technology.

SECTION 26. Amends Section 13.122, to change the misdemeanor penalties in the weights and measures law to make them consistent with the Penal Code.

SECTION 27. Amends Section 13.207, to include standard language developed by the Sunset Commission. Authorizes the department to use a range of penalties such as license supervision or revocation to deal with violations involving licensed butter fat testers. Provides that the person whose license is affected is entitled to a hearing on the action proposed by the department.

SECTION 28. Amends Section 13.211, to delete language that is no longer needed because it is now included in Chapter 13.

SECTION 29. Amends Section 13.212(d), to change the misdemeanor penalty in the weights and measures law to make it consistent with the Penal Code.

SECTION 30. Amends Section 13.255, to provide that the certification fee for public weighers is non-refundable.

SECTION 31. Adds Section 13.2555, to include standard language developed by the Sunset Commission. Authorizes the department to use a range of penalties to deal with violations involving certified public weighers. Provides that the person whose certification is affected is entitled to a hearing on the action proposed by the department.

SECTION 32. Amends Section 14.005(b), to provide that the license fee for operation of a public grain warehouse is annual and non-

refundable. Authorizes the department to charge a fee for late renewal of the licenses.

SECTION 33. Amends Section 14.015, to include standard language developed by the Sunset Commission. Authorizes the department to use a range of penalties to deal with violations involving a grain warehouse license. Provides that the person whose license is affected is entitled to a hearing on the action proposed by the department.

SECTION 34. Amends Section 16.010(b), to change the misdemeanor penalty related to antifreeze regulation to make it consistent with the Penal Code.

SECTION 35. Amends Section 41.059(a), to require a commissioner who disapproves a proposed budget of the commodity producers board to return the budget to the board within 45 days after it was submitted with a statement of reasons for disapproval.

SECTION 36. Amends Section 41.103(b), to change the misdemeanor penalty related to commodity boards to make it consistent with the Penal Code.

SECTION 37. Amends Section 53.024(b), to change the misdemeanor penalty related to the agriculture and livestock pools to make it consistent with the Penal Code.

SECTION 38. Adds Section 61.0135, to include standard language developed by the Sunset Commission. Authorizes the department to use a range of penalties to deal with violations involving a vegetable seed license. Provides that the person whose license is affected is entitled to a hearing on the action proposed by the department.

SECTION 39. Amends Section 61.018(c), to change the misdemeanor penalty related to seed regulation to make it consistent with the Penal Code.

SECTION 40. Amends Section 62.005, to provide for a non-refundable application fee for producers of Foundation, Registered or Certified seed or plants.

SECTION 41. Adds Section 62.0065, to include standard language developed by the Sunset Commission. Requires the department to notify a person taking an examination of the results within a reasonable time of the testing date.

SECTION 42. Amends Section 62.010, to include standard language developed by the Sunset Commission. Authorizes the department to use a range of penalties to deal with violations involving a licensed producer of Foundation, Registered or Certified seed or plants. Provides that the person whose license is affected is entitled to a hearing on the action proposed by the department.

SECTION 43. Amends Section 62.011, to change the misdemeanor penalties related to certified seed to make them consistent with the Penal Code.

SECTION 44. Amends Section 71.012, to authorize the imposition of increased civil penalties of \$250 to \$10,000 per day per violation for violations of general quarantine laws or related rules. Provides the department with the ability to seek injunctive relief through the attorney general or the appropriate county or district attorney for violations of general quarantine laws or related rules.

SECTION 45. Amends Section 71.013(b), to change the misdemeanor penalty related to the quarantine laws to make it consistent with the Penal Code.

SECTION 46. Amends Section 71.041, to provide that persons who sell or lease florist items and nursery products are subject to the department's nursery and floral regulations.

SECTION 47. Amends Section 71.042, to provide that the department's rulemaking authority related to nursery/floral regulation applies to leasing as well as to selling.

SECTION 48. Amends Section 71.043 to provide procedures, requirements, and prohibitions related to annual registration of commercial nurseries, greenhouses, orchards, and gardens. Deletes language relating to appointment of a chief inspector of nurseries.

SECTION 49. Amends Section 71.044, to require the department to inspect nurseries, greenhouses, orchards, gardens, florists, or other places that grow plant products for sale or lease at least once every three years. Requires additional inspections to ensure compliance with this subchapter and quarantine agreements. Allows a department inspector to examine documents relating to certain shipping and receiving or plant products found to be infested or shipped in violation of a quarantine.

SECTION 50. Amends Section 71.055, to make a conforming change in the language.

SECTION 51. Amends Section 71.050, to require persons in the business of leasing nursery products or florist items to have a certificate of inspection to transport the products.

SECTION 52. Amends Section 71.052(c), to allow the department to adopt rules governing the lease of products for the control of camellia flower blight.

SECTION 53. Amends Section 71.053, to require the department to inspect shipments of nursery products or florist items to assure they are free of pests or plant diseases. Provides requirements and procedures if the department finds a diseased or infested shipment, or if the shipment is not accompanied by the required tags and certificates.

SECTION 54. Amends Section 71.056, to delete obsolete language related to inspection fees.

SECTION 55. Amends Section 71.057, to define nursery dealer and agent and to require them to register with the department. Provides procedures and requirements related to the registration.

SECTION 56. Amends Section 71.058, to change the misdemeanor penalties in the nursery/floral law to make them consistent with the Penal Code.

SECTION 57. Adds Section 71.059, to authorize the imposition of new civil penalties of \$50 to \$1000 per day per violation for violations of the nursery/floral law or related rules. Authorizes the department to seek injunctive relief through the attorney general or the appropriate county or district attorney for violations of the nursery/floral law or related rules.

SECTION 58. Adds Section 71.060, to authorize the department to issue stop-sale orders preventing the sale of florist items or nursery products found in violation of the nursery/floral law or related rules. Allows the florist or nursery owner to sue in court to challenge the department's justification for the stop-sale.

SECTION 59. Amends Section 71.116(b), to change the misdemeanor penalties related to the vegetable plant law to make them consistent with the Penal Code.

SECTION 60. Adds Section 71.117, to authorize the imposition of new civil penalties of \$250 to \$10,000 per day per violation for violations of the vegetable plant law or related rules. Allows the

department to seek injunctive relief through the attorney general or the appropriate county or district attorney for violations of the vegetable plant law or related rules.

SECTION 61. Amends Section 72.042(g), to change the penalty the owner of a property declared a public nuisance by the court is required to pay the department for placing the premises in compliance.

SECTION 62. Adds Section 72.046, to authorize the imposition of new civil penalties of \$250 to \$10,000 per day per violation for violations of the Mexican fruit fly law or related rules. Allows the department to seek injunctive relief through the attorney general or the appropriate county or district attorney for violations of the Mexican fruit fly law or related rules.

SECTION 63. Amends Section 72.061, to provide that the penalty provided in this section applies to violations of the chapter for which no penalty is specified. Changes the misdemeanor penalty related to the Mexican fruit fly law to make it consistent with the Penal Code.

SECTION 64. Amends Section 72.062(b), to change the misdemeanor penalty related to violations of the Mexican fruit fly law to make it consistent with the Penal Code.

SECTION 65. Amends Section 72.063(b), to change the misdemeanor penalty related to violations of the Mexican fruit fly to make it consistent with the Penal Code.

SECTION 66. Amends Section 72.064(b), to change the misdemeanor penalties related to violations of the Mexican fruit fly law to make it consistent with the Penal Code.

SECTION 67. Amends Section 73.002, to make a nonsubstantive change in the language.

SECTION 68. Amends Section 73.005, to prohibit shipment of a seed, citrus fruit, or other host infected with certain pests or diseases into the citrus zone.

SECTION 69. Amends Section 73.009, to change the misdemeanor penalties for violations of the citrus law to make them consistent with the Penal Code.

SECTION 70. Adds Section 73.010, to authorize the imposition of new civil penalties of \$250 to \$10,000 per day per violation for violations of the citrus law and related rules. Allows the department to seek injunctive relief through the attorney general or the appropriate county or district attorney for violations of the citrus law and related rules.

SECTION 71. Amends Section 74.004(i), to allow the department to seek civil as well as criminal sanctions. This makes the section of law consistent with the new civil penalty authority provided elsewhere in this bill.

SECTION 72. Amends Section 74.007(b), to change the misdemeanor penalties for violations of the cotton law to make them consistent with the Penal Code.

SECTION 73. Adds Section 74.008, to authorize the imposition of civil penalties from \$250 to \$10,000 per violation for violations of the pink bollworm law or related rules. Allows the department to seek injunctive relief through the attorney general or the appropriate county or district attorney for violations of the pink bollworm law or related rules. Provides for deposit of penalties after collection. Requires all civil penalties recovered in suits first instituted by a local government under this section to be equally divided between the state of Texas and the local government.



SECTION 74. Amends Section 74.061(b), to change the misdemeanor penalties for violations of the pink bollworm law to make them consistent with the Penal Code.

SECTION 75. Adds Section 74.062, to authorize the imposition of new civil penalties of \$250 to \$10,000 for violations of the pink bollworm law or related rules. Allows the department to seek injunctive relief through the attorney general or the appropriate county or district attorney for violations of the pink bollworm law or related rules. Provides for deposit of penalties after collection. Requires all civil penalties recovered in suits first instituted by a local government under this section to be equally divided between the state of Texas and the local government.

SECTION 76. Amends Section 75.004, by adding Subsection (f), to allow the department to charge a fee for late renewal of a herbicide dealer's license.

SECTION 77. Adds Section 75.0055, to include standard language developed by the Sunset Commission. Authorizes the department to use a range of penalties to deal with violations involving a herbicide dealer's license. Provides that the person whose license is affected is entitled to a hearing on the action proposed by the department.

SECTION 78. Amends Section 75.024, to change the misdemeanor penalties for violations of the herbicide law to make them consistent with the Penal Code. Provides that the administrative penalty authority granted to the department in the pesticide law applies to violations of the herbicide law.

SECTION 79. Amends Section 76.007, to state that the department is the lead agency for pesticide regulation in Texas. Requires the department to take certain actions in the regulation of pesticides in cooperation with the U.S. Environmental Protection Agency or other pertinent federal agencies, including the adoption of rules to carry out the provisions of this chapter. Assigns the Texas Water Commission (TWC) principal authority to regulate and control water pollution. Requires the department to seek advice from certain state agencies and departments in reviewing applications for special local need or emergency pesticide registrations. Requires the department to give notice to TWC upon probable cause of a serious contamination of water from pesticides. Requires TWC to give notice to the department upon probable cause of a serious contamination of water from pesticides. Requires the department to consult with the Texas Department of Health (TDH) before denying or canceling a pesticide registration because of a suspected public health threat and to coordinate enforcement action with TDH upon suspicion of a serious public health threat.

SECTION 80. Amends Section 76.003, to limit the department in placing a pesticide on the state-limited-use list by requiring the department to obtain the approval of TWC concerning the impact of the pesticide's use on water quality. Requires the department to add any pesticide to the state-limited-use list and issue regulations regarding use of the pesticide at the direction of TWC pursuant to Chapter 26, Water Code.

SECTION 81. Amends Section 76.004, to require the department to conduct at least five regional hearings statewide before adoption of any rule for carrying out the provisions of this chapter. Allows the department to adopt rules providing for compliance with federal pesticide rules and regulations. Requires any department rules concerning water quality to be consistent with those of TWC pursuant to the recommendations of the Groundwater Protection Committee.

SECTION 82. Adds Section 76.009, to create the Agriculture Resources Protection Authority (authority). Provides for the membership of the authority, terms of members, and vacancies. Provides that the commissioner of agriculture is the presiding officer of

the authority. Provides for operation of the authority and reimbursement of members for expenses. Provides that the authority is the coordinating body for the policies and programs of management, regulation, and control of pesticides conducted by the department, the State Soil and Water Conservation Board, the Texas Agricultural Extension Service, TDH, TWC, and the Texas Structural Pest Control Board. Allows the authority to adopt rules relating to pesticides, with exceptions. Limits the actions of agencies and the commissioner concerning rules adopted by the authority. Specifies duties of the commissioner concerning the authority.

SECTION 83. Amends Section 76.044, to provide that the fee for registration or renewal of registration of pesticides is non-refundable. Authorizes the department to charge an additional late fee for late renewal of pesticide registration.

SECTION 84. Amends Section 76.073(b), to require licensees who fail to apply for renewal on or before the expiration date to pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.

SECTION 85. Amends Section 76.076, to include standard language developed by the Sunset Commission. Authorizes the department to use a full range of penalties to deal with violations involving a pesticide dealer's license. Provides that the person whose license is affected is entitled to a hearing on the action proposed by the department.

SECTION 86. Amends Section 76.101, to provide that pesticide applicators regulated by the law are licensed and not certified. Requires the department and the Texas Agriculture Extension Service to adopt a joint memorandum of understanding to coordinate, plan and approve the training programs required for commercial technicians and private applicators. The training required is provided for elsewhere in the bill.

SECTION 87. Amends Section 76.102, to provide that pesticide applicators regulated by law are licensed and not certified.

SECTION 88. Amends Section 76.103, to add commercial applicators and private applicators as licensees subject to the requirements of the law.

SECTION 89. Amends Section 76.105, to add commercial applicators and private applicators as licensees authorized to use or supervise the use of restricted-use of state-limited-use pesticides. Provides that applicators regulated by the law are licensed and not certified. Allows the department to adopt rules commensurate with federal rules concerning licensing. Allows the department to adopt by rule federal standards for each applicator classification for which federal standards are imposed.

SECTION 90. Amends Section 76.106, to add commercial applicators as licensees subject to the section of law which provides the authority to classify licenses into use categories.

SECTION 91. Amends Section 76.107, to provide that pesticide applicators regulated by the law are licensed and not certified.

SECTION 92. Amends Section 76.108, to provide that the fee for a commercial pesticide applicator license is non-refundable. Provides that commercial applicators are licensed and not certified.

SECTION 93. Amends Section 76.109, to specify that the fee for a non-commercial applicator license is non-refundable. Provides that pesticide applicators are licensed and not certified.

SECTION 94. Amends Section 76.110, to provide that both commercial and non-commercial applicators are required to pass an examination for licensure. Adds standard language developed by the Sunset Com-

mission which requires the department to give notice of examination results to examinees within a reasonable time after testing.

SECTION 95. Amends Section 76.111, to raise the minimum amount of financial responsibility to \$100,000 for both property damage and bodily injury for commercial applicators license applicants. Re-numbers subsections.

SECTION 96. Amends Section 76.112, to delete language which exempted private applicators from licensing requirements. Provides that private applicators are persons authorized to use or supervise the use of restrict-use pesticides or state-limited-use pesticides for the purpose of producing an agricultural product. Requires private applicators to receive training and pay a \$50 fee to obtain a license. Prohibits the issuance of a private applicator license to an applicant who has had a license issued under this subchapter revoked within the last two years.

SECTION 97. Amends Section 76.113, to provide that the new private applicator license is valid for five years. Provides that private applicators can be required to undertake additional training for license renewal as do all other pesticide applicators. Authorizes the department to charge a fee for late renewal of all pesticide licenses.

SECTION 98. Amends Section 76.114, to provide that recordkeeping requirements for pesticide use apply to both commercial and non-commercial applicators.

SECTION 99. Amends Section 76.116, to include standard language developed by the Sunset Commission. Authorizes the department to use a full range of penalties to deal with violations involving pesticide applicators' licenses. Provides that the person whose license is affected is entitled to a hearing on the action proposed by the department.

SECTION 100. Amends Section 76.131(a), to require department rules governing the storage and disposal of pesticides and pesticide containers to prevent waterway pollution to be consistent with TWC rules adopted under Chapter 26, Water Code.

SECTION 101. Adds Section 76.1555, to increase the department's authority to assess administrative penalties for violations of the pesticide and herbicide law. The new authority provides for penalties of up to \$2000 per day, per violation against any person violating the laws or related rules, but limited to \$4,000 for all violations related to a single incident. Requires the department to use specific criteria in determining penalty amounts to be used and to publish a schedule of those amounts in the Texas Register. Provides procedures for departmental notification of persons charged with penalties. Provides procedures regarding payment of the penalty and for contesting the department's findings.

SECTION 102. Amends Section 76.156, to increase the maximum civil penalty that can be used against violations of the pesticide law administered by the department from \$1000 to \$10,000. Provides that the civil penalties remain unchanged for violations of provisions of the law administered by other agencies. Provides for deposit of penalties after collection. Requires all civil penalties recovered in suits first instituted by a local government under this section to be equally divided between the state of Texas and the local government.

SECTION 103. Amends Section 76.182, to include the new license category of private applicator in the process providing for appeal of license denial, suspension, modification or revocation.

SECTION 104. Amends Section 76.201(b), to delete the pollution of a water supply or waterway by disposal of pesticides or pesticide containers from the list of offenses.

SECTION 105. Amends Section 76.201(e), to provide that a person commits an offense by knowingly or intentionally using a pesticide to cause injury to man, vegetation, crops, livestock, wildlife, or pollinating insects, and deletes reference to bodily injury and water pollution.

SECTION 106. Amends Section 78.045(c), to change the misdemeanor penalty for violations of the noxious weed control law to make it consistent with the Penal Code.

SECTION 107. Amends Section 91.008(b), to change the misdemeanor penalty for violation of the grading and packing law to make it consistent with the Penal Code.

SECTION 108. Amends Section 92.042, to change the misdemeanor penalty for violations of the tomato inspection law to make it consistent with the Penal Code.

SECTION 109. Amends Section 93.062, to change the misdemeanor penalty in the citrus inspection law to make it consistent with the Penal Code.

SECTION 110. Amends Section 94.052, to change the misdemeanor penalty in the citrus maturity law to make it consistent with the Penal Code.

SECTION 111. Amends Section 95.042, to change the misdemeanor penalty in the citrus standards law to make it consistent with the Penal Code.

SECTION 112. Amends Section 101.012, to add standard language developed by the Sunset Commission. Authorizes the department to use a range of penalties to deal with violations involving licenses issued under the Agricultural Protective Act. Provides that the person whose license is affected is entitled to a hearing on the action proposed by the department.

SECTION 113. Adds Section 101.0185, to authorize the imposition of new civil penalties of up to \$500 for violations of the Agricultural Protective Act or related rules. Authorizes the department to seek injunctive relief through the attorney general or the appropriate county or district attorney for violations of the Agricultural Protective Act or related rules. Provides for deposit of penalties after collection. Requires all civil penalties recovered in suits first instituted by a local government under this section to be equally divided between the state of Texas and the local government.

SECTION 114. Amends Section 101.019, to make the section of law dealing with venue for criminal or civil action consistent with the rest of the bill.

SECTION 115. Amends Section 102.012 to add standard language developed by the Sunset Commission. Authorizes the department to use a range of penalties to deal with violations involving licenses issued under the Agricultural Protective Act. Provides that the person whose license is affected is entitled to a hearing on the action proposed by the department.

SECTION 116. Adds Section 102.0195, to authorize the imposition of new civil penalties of up to \$500 for violations of the Agricultural Protective Act or related rules. Authorizes the department to seek injunctive relief through the attorney general or the appropriate county or district attorney for violations of the Agricultural Protective Act or related rules. Provides for deposit of penalties after collection. Requires all civil penalties recovered in suits first instituted by a local government under this section to be equally divided between the state of Texas and the local government.

SECTION 117. Amends Section 102.020, to make the section of law dealing with venue for criminal or civil action consistent with the rest of the bill.

SECTION 118. Amends Section 102.104(b), to change the misdemeanor penalty for violations of the Agricultural Protective Act to make it consistent with the Penal Code.

SECTION 119. Adds Section 102.1045, to authorize the imposition of new civil penalties of up to \$500 for violations of the Agricultural Protective Act or related rules. Authorizes the department to seek injunctive relief through the attorney general or the appropriate county or district attorney for violations of the Agricultural Protective Act or related rules. Provides for deposit of penalties after collection. Requires all civil penalties recovered in suits first instituted by a local government under this section to be equally divided between the state of Texas and the local government.

SECTION 120. Amends Section 102.171(b), to change the misdemeanor penalty for violations of the Agricultural Protective Act to make it consistent with the Penal Code.

SECTION 121. Adds Section 103.0055, to allow the department to pay legitimate claims out of the Produce Recovery Fund even though the licensee involved has been granted bankruptcy. The produce fund is used to reimburse fruit and vegetable growers for bad credit transactions involving a commission merchant or retailer licensed under this Act.

SECTION 122. Adds Section 103.009(d), to exempt licensed commission merchants and retailers that have been granted bankruptcy from having to reimburse the produce fund for claims paid against them. This allows legitimate claims to be paid out of the fund.

SECTION 123. Adds Section 103.015, to authorize the imposition of new civil penalties of up to \$500 for violations of the Agricultural Protective Act or related rules. Authorizes the department to seek injunctive relief through the attorney general or the appropriate county or district attorney for violations of the Agricultural Protective Act or related rules. Provides for deposit of penalties after collection. Requires all civil penalties recovered in suits first instituted by a local government under this section to be equally divided between the state of Texas and the local government.

SECTION 124. Amends Section 111.007(c), to change the misdemeanor penalty for violations of the Agricultural Protective Act to make it consistent with the Penal Code.

SECTION 125. Amends Section 112.009(b), to change the misdemeanor penalty for violations of the cotton classing law to make it consistent with the Penal Code.

SECTION 126. Amends Section 121.010(b), to change the misdemeanor penalty for violations of the rose grading law to make it consistent with the Penal Code.

SECTION 127. Amends Section 132.025(b), to authorize the department to charge a fee for late renewal of licenses issued under the egg law.

SECTION 128. Adds Section 132.0715, to authorize the imposition of new civil penalties of up to \$500 for violations of the egg law or related rules. Authorizes the department to seek injunctive relief through the attorney general or the appropriate county or district attorney for violations of the egg law or related rules. Provides for deposit of penalties after collection. Requires all civil penalties recovered in suits first instituted by a local government under this section to be equally divided between the state of Texas and the local government.

SECTION 129. Amends Section 132.072, to include standard language developed by the Sunset Commission. Authorizes the department to use a range of penalties to deal with violations involving licenses issued under the egg law. Provides that the person whose license is affected is entitled to a hearing on the action proposed by the department.

SECTION 130. Amends Section 13.09, State Purchasing and General Services Act (Article 601b, V.T.C.S.), to provide that the department is subject to the competitive review provisions of the Act.

SECTION 131. Repeals the following sections from the Agriculture Code: 71.045, 75.005(d), 101.018(d), 101.018(e), 102.019(d), and 102.019(e).

SECTION 132. Requires the first policy statement required to be filed under Section 12.013(e), Agriculture Code, as amended by this Act, to be filed by November 1, 1989.

SECTION 133. Requires the initial policies established under Section 12.029, Agriculture Code, as added by this Act, to be filed with the State Purchasing and General Services Commission and the Texas Department of Commerce by September 1, 1990.

SECTION 134. Specifies that the department's development of a fee schedule providing for cost recovery in its regulatory programs, required under Section 12.0145, Agriculture Code, as added by this Act, is limited to 50 percent cost recovery for the next two fiscal bienniums.

SECTION 135. Specifies that the requirement for the department to conduct a review of commercially available services currently performed in-house, under Section 12.207, Agriculture Code, as added by this Act, and Section 13.09, Article 601b, V.T.C.S., as amended by this Act, is limited to warehousing and mail functions until September 1, 1991.

SECTION 136. Allows the department, in establishing the licensing programs for private applicators, to suspend the training requirement for private applicators currently certified under the department's voluntary program. Requires these applicators to receive training before their licenses are renewed.

SECTION 137. Requires the department, in establishing the licensing program for private applicators, to establish a system to stagger the licensing of private applicators.

SECTION 138. Requires the licensing requirements for private applicators to become effective January 1, 1990.

SECTION 139. Makes application of this Act prospective.

SECTION 140. Specifies that changes made in this Act related to the Produce Recovery Fund only apply to claims filed after the effective date of the Act.

SECTION 141. Provides that the change in law made by Section 2 of this Act applies only to elections held or appointments made on or after the effective date of this Act.

SECTION 142. Appropriates \$100,000 for each year of the fiscal biennium ending August 31, 1991 from the General Revenue Fund to the Agriculture Resources Protection Authority to perform authority powers and duties under Section 76.009, Agriculture Code, as added by this Act.

SECTION 143. Effective date: September 1, 1989.

SECTION 144. Emergency clause.